

AMENDED IN ASSEMBLY JUNE 1, 1999  
AMENDED IN ASSEMBLY APRIL 28, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 645**

**Introduced by Assembly Member Honda**

February 23, 1999

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An act to amend Sections 19, 102, 202, 209, 241.1, 300.2, 317, 358.1, 360, 361, ~~601~~, 706.5, 1401, and 1402 of the Welfare and Institutions Code, relating to minors.

### LEGISLATIVE COUNSEL'S DIGEST

AB 645, as amended, Honda. Minors: special education.

Existing law provides that the juvenile court shall have jurisdiction in the case of a minor who has been abused or neglected, and may adjudge that minor to be a dependent child of the court. Existing law also provides that the juvenile court shall have jurisdiction in the case of a person who is alleged to have violated any law or ordinance when he or she was under 18 years of age and may adjudge that person to be a ward of the court.

These provisions require that various services be provided to these minors, including care, treatment, and guidance. These provisions also require that the court and local employees, including probation officers and social workers, and court-appointed special advocates, monitor, among other things, the placement of these minors and ensure that they receive services to which they are entitled.

Existing law requires that children with special educational needs, as defined, and person with disabilities, as described, are entitled to various educational services and accommodations, as specified.

This bill would revise the provisions of the juvenile court law to require the court, court-appointed special advocates, probation officers, and social workers, as applicable, to take specified actions to ensure that these children receive any special education *and related* services and any accommodations for the disabled, as applicable, to which they are entitled under state and federal law, as specified.

*By imposing additional duties on local employees, the bill would create a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 19 of the Welfare and  
2 Institutions Code is amended to read:  
3 19. It is the purpose of this code, in establishing  
4 programs and services which are designed to provide  
5 protection, support or care of children, to provide  
6 protective services to the fullest extent deemed necessary  
7 by the juvenile court, probation department or other  
8 public agencies designated by the board of supervisors to  
9 perform the duties prescribed by this code to insure that  
10 the educational rights, including the right to receive  
11 special education *and related* services if the child has

1 exceptional needs as described in Part 30 (commencing  
2 with Section 56000) of Division 4 of Title 2 of the  
3 Education Code, and the right to receive  
4 accommodations if the child has disabilities as described  
5 in Chapter 16 of Title 29 of the United States Code  
6 Annotated, or other rights or physical, mental or moral  
7 welfare of children are not violated or threatened by their  
8 present circumstances or environment. These essential  
9 services may be provided irrespective of whether the  
10 child or the family of the child is otherwise known to the  
11 responsible local agency.

12 SEC. 2. Section 102 of the Welfare and Institutions  
13 Code is amended to read:

14 102. (a) Each CASA program shall, if feasible, be  
15 staffed by a minimum of one paid administrator. The staff  
16 shall be directly accountable to the presiding juvenile  
17 court judge and the CASA program board of directors, as  
18 applicable.

19 (b) The program shall provide for volunteers to serve  
20 as CASAs. A CASA may be appointed in juvenile  
21 dependency proceedings under Section 300 and in  
22 actions to terminate parental rights to custody and  
23 control, as deemed appropriate by the juvenile or other  
24 superior court judge hearing the matter.

25 (c) Each CASA shall serve at the pleasure of the court  
26 having jurisdiction over the proceedings in which a CASA  
27 has been appointed. A CASA shall do all of the following:

28 (1) Provide independent, factual information to the  
29 court regarding the cases to which he or she is appointed.

30 (2) Represent the best interests of the children  
31 involved, and consider the best interests of the family, in  
32 the cases to which he or she is appointed.

33 (3) At the request of the judge, monitor cases to which  
34 he or she has been appointed to assure that the court's  
35 orders have been fulfilled.

36 (d) The Judicial Council, through its rules and  
37 regulations, shall require an initial and ongoing training  
38 program consistent with this chapter to all persons acting  
39 as a CASA, including, but not limited to, each of the  
40 following:

1 (1) Dynamics of child abuse and neglect.  
2 (2) Court structure, including juvenile court laws  
3 regarding dependency.  
4 (3) Social service systems.  
5 (4) Child development.  
6 (5) Interviewing techniques.  
7 (6) Educational rights and responsibilities, including  
8 the right of the child to receive special education *and*  
9 *related* services if the child has exceptional needs as  
10 described in Part 30 (commencing with Section 56000) of  
11 Division 4 of Title 2 of the Education Code, or the right  
12 to receive accommodations if the child has disabilities as  
13 described in Chapter 16 of Title 29 of the United States  
14 Code Annotated.  
15 (7) Report writing.  
16 (8) Roles and responsibilities of a CASA.  
17 (9) Rules of evidence and discovery procedures.  
18 (10) Problems associated with verifying reports.  
19 (e) The Judicial Council, through its CASA Advisory  
20 Committee, shall adopt guidelines for the screening of  
21 CASA volunteers, which shall include personal  
22 interviews, reference checks, checks for records of sex  
23 offenses and other criminal records, information from the  
24 Department of Motor Vehicles, and other information as  
25 the Judicial Council deems appropriate.  
26 SEC. 3. Section 202 of the Welfare and Institutions  
27 Code is amended to read:  
28 202. (a) The purpose of this chapter is to provide for  
29 the protection and safety of the public and each minor  
30 under the jurisdiction of the juvenile court and to  
31 preserve and strengthen the minor's family ties  
32 whenever possible, removing the minor from the custody  
33 of his or her parents only when necessary for his or her  
34 welfare or for the safety and protection of the public.  
35 When removal of a minor is determined by the juvenile  
36 court to be necessary, reunification of the minor with his  
37 or her family shall be a primary objective. When the  
38 minor is removed from his or her own family, it is the  
39 purpose of this chapter to secure for the minor custody,  
40 care, and discipline as nearly as possible equivalent to that



1 which should have been given by his or her parents. This  
2 chapter shall be liberally construed to carry out these  
3 purposes.

4 (b) Minors under the jurisdiction of the juvenile court  
5 who are in need of protective services shall receive care,  
6 treatment, guidance, and education, including special  
7 education *and related* services if the child has exceptional  
8 needs as described in Part 30 (commencing with Section  
9 56000) of Division 4 of Title 2 of the Education Code or  
10 the right to receive accommodations if the child has  
11 disabilities as described in Chapter 16 of Title 29 of the  
12 United States Code Annotated consistent with their best  
13 interest and the best interest of the public. Minors under  
14 the jurisdiction of the juvenile court as a consequence of  
15 delinquent conduct shall, in conformity with the interests  
16 of public safety and protection, receive care, treatment  
17 and guidance which is consistent with their best interest,  
18 which holds them accountable for their behavior, and  
19 which is appropriate for their circumstances. This  
20 guidance may include punishment that is consistent with  
21 the rehabilitative objectives of this chapter. If a minor has  
22 been removed from the custody of his or her parents,  
23 family preservation and family reunification are  
24 appropriate goals for the juvenile court to consider when  
25 determining the disposition of a minor under the  
26 jurisdiction of the juvenile court as a consequence of  
27 delinquent conduct when those goals are consistent with  
28 his or her best interests and the best interests of the  
29 public. When the minor is no longer a ward of the juvenile  
30 court, the guidance he or she received should enable him  
31 or her to be a law-abiding and productive member of his  
32 or her family and the community.

33 (c) It is also the purpose of this chapter to reaffirm that  
34 the duty of a parent to support and maintain a minor child  
35 continues, subject to the financial ability of the parent to  
36 pay, during any period in which the minor may be  
37 declared a ward of the court and removed from the  
38 custody of the parent.

39 (d) Juvenile courts and other public agencies charged  
40 with enforcing, interpreting, and administering the

1 juvenile court law shall consider the safety and protection  
2 of the public, the importance of redressing injuries to  
3 victims, and the best interests of the minor in all  
4 deliberations pursuant to this chapter. Participants in the  
5 juvenile justice system shall hold themselves accountable  
6 for its results. They shall act in conformity with a  
7 comprehensive set of objectives established to improve  
8 system performance in a vigorous and ongoing manner.

9 (e) As used in this chapter, “punishment” means the  
10 imposition of sanctions which include the following:

11 (1) Payment of a fine by the minor.

12 (2) Rendering of compulsory service without  
13 compensation performed for the benefit of the  
14 community by the minor.

15 (3) Limitations on the minor’s liberty imposed as a  
16 condition of probation or parole.

17 (4) Commitment of the minor to a local detention or  
18 treatment facility, such as a juvenile hall, camp, or ranch.

19 (5) Commitment of the minor to the Department of  
20 the Youth Authority.

21 “Punishment,” for the purposes of this chapter, does  
22 not include retribution.

23 (f) In addition to the actions authorized by subdivision  
24 (e), the juvenile court may, as appropriate, direct the  
25 offender to complete a victim impact class, participate in  
26 victim offender conferencing subject to the victim’s  
27 consent, pay restitution to the victim or victims, and  
28 make a contribution to the victim restitution fund after  
29 all victim restitution orders and fines have been satisfied,  
30 in order to hold the offender accountable or restore the  
31 victim or community.

32 SEC. 4. Section 209 of the Welfare and Institutions  
33 Code is amended to read:

34 209. (a) The judge of the juvenile court of a county,  
35 or, if there is more than one judge, any of the judges of the  
36 juvenile court shall, at least annually, inspect any jail,  
37 juvenile hall, or special purpose juvenile hall that, in the  
38 preceding calendar year, was used for confinement, for  
39 more than 24 hours, of any minor.

1 The judge shall promptly notify the operator of the jail,  
2 juvenile hall, or special purpose juvenile hall of any  
3 observed noncompliance with minimum standards for  
4 juvenile facilities adopted by the Board of Corrections  
5 under Section 210. Based on the facility's subsequent  
6 compliance with the provisions of subdivisions (d) and  
7 (e), the judge shall thereafter make a finding whether the  
8 facility is a suitable place for the confinement of minors;  
9 ~~which determination shall include whether the school~~  
10 ~~district serving confined minors has met its legal~~  
11 ~~obligations to provide educational services to the child,~~  
12 ~~including special education services if the child has~~  
13 ~~exceptional needs as described in Part 30 (commencing~~  
14 ~~with Section 56000) of Division 4 of Title 2 of the~~  
15 ~~Education Code or to provide accommodations if the~~  
16 ~~child has disabilities as described in Chapter 16 of Title 29~~  
17 ~~of the United States Code Annotated and shall note the~~  
18 ~~and shall note the~~ finding in the minutes of the court.

19 The Board of Corrections shall conduct a biennial  
20 inspection of each jail, juvenile hall, lockup, or special  
21 purpose juvenile hall situated in this state that, during the  
22 preceding calendar year, was used for confinement, for  
23 more than 24 hours, of any minor. The board shall  
24 promptly notify the operator of any jail, juvenile hall,  
25 lockup, or special purpose juvenile hall of any  
26 noncompliance found, upon inspection, with any of the  
27 minimum standards for juvenile facilities adopted by the  
28 Board of Corrections under Section 210 or 210.2.

29 If either a judge of the juvenile court or the board, after  
30 inspection of a jail, juvenile hall, special purpose juvenile  
31 hall, or lockup, finds that it is not being operated and  
32 maintained as a suitable place for the confinement of  
33 minors, the juvenile court or the board shall give notice  
34 of its finding to all persons having authority to confine  
35 minors pursuant to this chapter and commencing 60 days  
36 thereafter the facility shall not be used for confinement  
37 of minors until the time the judge or board, as the case  
38 may be, finds, after reinspection of the facility that the  
39 conditions that rendered the facility unsuitable have

1 been remedied, and the facility is a suitable place for  
2 confinement of minors.

3 The custodian of each jail, juvenile hall, special purpose  
4 juvenile hall, and lockup shall make any reports as may be  
5 requested by the board or the juvenile court to effectuate  
6 the purposes of this section.

7 (b) The Board of Corrections may inspect any law  
8 enforcement facility that contains a lockup for adults and  
9 that it has reason to believe may not be in compliance  
10 with the requirements of subdivision (d) of Section 207.1  
11 or with the certification requirements or standards  
12 adopted under Section 210.2. A judge of the juvenile court  
13 shall conduct an annual inspection, either in person or  
14 through a delegated member of the appropriate county  
15 or regional juvenile justice commission, of any law  
16 enforcement facility that contains a lockup for adults  
17 which, in the preceding year, was used for the secure  
18 detention of any minor. If the law enforcement facility is  
19 observed, upon inspection, to be out of compliance with  
20 the requirements of subdivision (d) of Section 207.1, or  
21 with any standard adopted under Section 210.2, the board  
22 or the judge shall promptly notify the operator of the law  
23 enforcement facility of the specific points of  
24 noncompliance.

25 If either the judge or the board finds after inspection  
26 that the facility is not being operated and maintained in  
27 conformity with the requirements of subdivision (d) of  
28 Section 207.1 or with the certification requirements or  
29 standards adopted under Section 210.2, the juvenile court  
30 or the board shall give notice of its finding to all persons  
31 having authority to securely detain minors in the facility,  
32 and, commencing 60 days thereafter, the facility shall not  
33 be used for the secure detention of a minor until the time  
34 the judge or the board, as the case may be, finds, after  
35 reinspection, that the conditions that rendered the  
36 facility unsuitable have been remedied, and the facility is  
37 a suitable place for the confinement of minors in  
38 conformity with all requirements of law.

39 The custodian of each law enforcement facility that  
40 contains a lockup for adults shall make any report as may



1 be requested by the board or by the juvenile court to  
2 effectuate the purposes of this subdivision.

3 (c) The board shall collect biennial data on the  
4 number, place, and duration of confinements of minors  
5 in jails and lockups, as defined in subdivision (i) of Section  
6 207.1, and shall publish biennially this information in the  
7 form as it deems appropriate for the purpose of providing  
8 public information on continuing compliance with the  
9 requirements of Section 207.1.

10 (d) Except as provided in subdivision (e), a juvenile  
11 hall, special purpose juvenile hall, law enforcement  
12 facility, or jail shall be unsuitable for the confinement of  
13 minors if it is not in compliance with one or more of the  
14 minimum standards for juvenile facilities adopted by the  
15 Board of Corrections under Section 210 or 210.2, and if,  
16 within 60 days of having received notice of  
17 noncompliance from the board or the judge of the  
18 juvenile court, the juvenile hall, special purpose juvenile  
19 hall, law enforcement facility, or jail has failed to file an  
20 approved corrective action plan with the Board of  
21 Corrections to correct the condition or conditions of  
22 noncompliance of which it has been notified. The  
23 corrective action plan shall outline how the juvenile hall,  
24 special purpose juvenile hall, law enforcement facility, or  
25 jail plans to correct the issue of noncompliance and give  
26 a reasonable timeframe, not to exceed 90 days, for  
27 resolution, that the board shall either approve or deny. In  
28 the event the juvenile hall, special purpose juvenile hall,  
29 law enforcement facility, or jail fails to meet its  
30 commitment to resolve noncompliance issues outlined in  
31 its corrective action plan, the board shall make a  
32 determination of suitability at its next scheduled meeting.

33 (e) Where a juvenile hall is not in compliance with one  
34 or more of the minimum standards for juvenile facilities  
35 adopted by the Board of Corrections under Section 210,  
36 and where the noncompliance arises from sustained  
37 occupancy levels that are above the population capacity  
38 permitted by applicable minimum standards, the  
39 juvenile hall shall be unsuitable for the confinement of  
40 minors if the board or the judge of the juvenile court

1 determines that conditions in the facility pose a serious  
2 risk to the health, safety, or welfare of minors confined in  
3 the facility. In making its determination of suitability, the  
4 board or the judge of the juvenile court shall consider, in  
5 addition to the noncompliance with minimum standards,  
6 the totality of conditions in the juvenile hall, including the  
7 extent and duration of overpopulation as well as staffing,  
8 program, physical plant, and medical and mental health  
9 care conditions *and educational programs* in the facility.  
10 The Board of Corrections may develop guidelines and  
11 procedures for its determination of suitability in  
12 accordance with this subdivision and to assist counties in  
13 bringing their juvenile halls into full compliance with  
14 applicable minimum standards. This subdivision shall not  
15 be interpreted to exempt a juvenile hall from having to  
16 correct, in accordance with the provisions of subdivision  
17 (d), any minimum standard violations that are not  
18 directly related to overpopulation of the facility.

19 SEC. 5. Section 241.1 of the Welfare and Institutions  
20 Code is amended to read:

21 241.1. (a) Whenever a minor appears to come within  
22 the description of both Section 300 and Section 601 or 602,  
23 the county probation department and the county welfare  
24 department shall, pursuant to a jointly developed written  
25 protocol described in subdivision (b), initially determine  
26 which status will serve the best interests of the minor and  
27 the protection of society. The recommendations of both  
28 departments shall be presented to the juvenile court with  
29 the petition that is filed on behalf of the minor, and the  
30 court shall determine which status is appropriate for the  
31 minor. Any other juvenile court having jurisdiction over  
32 the minor shall receive notice from the court, within five  
33 calendar days, of the presentation of the  
34 recommendations of the departments. The notice shall  
35 include the name of the judge to whom, or the courtroom  
36 to which, the recommendations were presented.

37 (b) The probation department—~~and—the—welfare~~  
38 ~~department,~~ the welfare department, and the  
39 appropriate local educational agency in each county shall  
40 jointly develop a written protocol to ensure appropriate

1 local coordination in the assessment of a minor described  
 2 in subdivision (a), and the development of  
 3 recommendations by these departments for  
 4 consideration by the juvenile court. These protocols shall  
 5 require, which requirements shall not be limited to,  
 6 consideration of the nature of the referral, the age of the  
 7 minor, the prior record of the minor's parents for child  
 8 abuse, the prior record of the minor for out-of-control or  
 9 delinquent behavior, the parents' cooperation with the  
 10 minor's school, the minor's ~~functioning at school, the~~  
 11 ~~school's compliance with federal and California laws~~  
 12 ~~providing for the minor's education rights~~ *functioning at*  
 13 *school, the minor's educational needs*, including the right  
 14 to receive special education *and related* services if the  
 15 child has exceptional needs as described in Part 30  
 16 (commencing with Section 56000) of Division 4 of Title  
 17 2 of the Education Code and the right to receive  
 18 accommodations if the child has disabilities as described  
 19 in Chapter 16 of Title 29 of the United States Code  
 20 Annotated, the nature of the minor's home environment,  
 21 and the records of other agencies which have been  
 22 involved with the minor and his or her family. The  
 23 protocols also shall contain provisions for resolution of  
 24 disagreements between the probation and welfare  
 25 departments regarding the need for dependency or ward  
 26 status and provisions for determining the circumstances  
 27 under which a new petition should be filed to change the  
 28 minor's status.

29 (c) Nothing in this section shall be construed to  
 30 authorize the filing of a petition or petitions, or the entry  
 31 of an order by the juvenile court, to make a minor  
 32 simultaneously both a dependent child and a ward of the  
 33 court.

34 SEC. 6. Section 300.2 of the Welfare and Institutions  
 35 Code is amended to read:

36 300.2. Notwithstanding any other provision of law, the  
 37 purpose of the provisions of this chapter relating to  
 38 dependent children is to provide maximum safety and  
 39 protection for children who are currently being  
 40 physically, sexually, or emotionally abused, being

1 neglected, or being exploited, and to ensure the safety,  
2 protection, and physical and emotional well-being of  
3 children who are at risk of that harm. This safety,  
4 protection, and physical and emotional well-being may  
5 include provision of a full array of educational services,  
6 including special education *and related* services if the  
7 child has exceptional needs as described in Part 30  
8 (commencing with Section 56000) of Division 4 of Title  
9 2 of the Education Code or accommodations if the child  
10 has disabilities as described in Chapter 16 of Title 29 of the  
11 United States Code Annotated, social and health services  
12 to help the child and family and to prevent reabuse of  
13 children. The focus shall be on the preservation of the  
14 family as well as the safety, protection, and physical and  
15 emotional well-being of the child. The provision of a  
16 home environment free from the negative effects of  
17 substance abuse is a necessary condition for the safety,  
18 protection and physical and emotional well-being of the  
19 child. Successful participation in a treatment program for  
20 substance abuse may be considered in evaluating the  
21 home environment.

22 SEC. 7. Section 317 of the Welfare and Institutions  
23 Code is amended to read:

24 317. (a) When it appears to the court that a parent or  
25 guardian of the minor desires counsel but is presently  
26 financially unable to afford and cannot for that reason  
27 employ counsel, the court may appoint counsel as  
28 provided in this section.

29 (b) When it appears to the court that a parent or  
30 guardian of the minor is presently financially unable to  
31 afford and cannot for that reason employ counsel, and the  
32 minor has been placed in out-of-home care, or the  
33 petitioning agency is recommending that the minor be  
34 placed in out-of-home care, the court shall appoint  
35 counsel, unless the court finds that the parent or guardian  
36 has made a knowing and intelligent waiver of counsel as  
37 provided in this section.

38 (c) In any case in which it appears to the court that the  
39 minor would benefit from the appointment of counsel the  
40 court shall appoint counsel for the minor as provided in



1 this section. A primary responsibility of any counsel  
2 appointed to represent a minor pursuant to this section  
3 shall be to advocate for the minor's educational rights,  
4 including the right to receive special education *and*  
5 *related* services if the child has exceptional needs as  
6 described in Part 30 (commencing with Section 56000) of  
7 Division 4 of Title 2 of the Education Code and the right  
8 to receive accommodations if the child has disabilities as  
9 described in Chapter 16 of Title 29 of the United States  
10 Code Annotated, protection, safety, and physical and  
11 emotional well-being of the minor. Counsel for the minor  
12 may be a county counsel, district attorney, public  
13 defender, or other member of the bar, provided that the  
14 counsel does not represent another party or county  
15 agency whose interests conflict with the minor's. The fact  
16 that the district attorney represents the minor in a  
17 proceeding pursuant to Section 300 as well as conducts a  
18 criminal investigation or files a criminal complaint or  
19 information arising from the same or reasonably related  
20 set of facts as the proceeding pursuant to Section 300 is not  
21 in and of itself a conflict of interest. The court shall  
22 determine if representation of both the petitioning  
23 agency and the minor constitutes a conflict of interest. If  
24 the court finds there is a conflict of interest, separate  
25 counsel shall be appointed for the minor. The court may  
26 fix the compensation to be paid by the county for the  
27 services of appointed counsel, if counsel is not a county  
28 counsel, district attorney, public defender or other public  
29 attorney.

30 (d) The counsel appointed by the court shall represent  
31 the parent, guardian, or minor at the detention hearing  
32 and at all subsequent proceedings before the juvenile  
33 court. Counsel shall continue to represent the parent or  
34 minor unless relieved by the court upon the substitution  
35 of other counsel or for cause. The representation shall  
36 include representing the parent or the minor in  
37 termination proceedings and in those proceedings  
38 relating to the institution or setting aside of a legal  
39 guardianship.

1 (e) The counsel for the minor shall be charged in  
2 general with the representation of the minor's interests.  
3 To that end, the counsel shall make or cause to have made  
4 any further investigations that he or she deems in good  
5 faith to be reasonably necessary to ascertain the facts,  
6 including the interviewing of witnesses, and he or she  
7 shall examine and cross-examine witnesses in both the  
8 adjudicatory and dispositional hearings. He or she may  
9 also introduce and examine his or her own witnesses,  
10 make recommendations to the court concerning the  
11 minor's welfare, and participate further in the  
12 proceedings to the degree necessary to adequately  
13 represent the minor. In any case in which the minor is  
14 four years of age or older, counsel shall interview the  
15 minor to determine the minor's wishes and to assess the  
16 minor's well-being, and shall advise the court of the  
17 minor's wishes. Counsel for the minor shall not advocate  
18 for the return of the minor if, to the best of his or her  
19 knowledge, that return conflicts with the protection and  
20 safety of the minor. In addition counsel shall investigate  
21 the interests of the minor beyond the scope of the  
22 juvenile proceeding and report to the court other  
23 interests of the minor that may need to be protected by  
24 the institution of other administrative or judicial  
25 proceedings. The attorney representing a child in a  
26 dependency proceeding is not required to assume the  
27 responsibilities of a social worker and is not expected to  
28 provide nonlegal services to the child. The court shall  
29 take whatever appropriate action is necessary to fully  
30 protect the interests of the minor.

31 (f) Notwithstanding any other law, counsel shall be  
32 given access to all records relevant to the case which are  
33 maintained by state or local public agencies. All  
34 information requested from a child protective agency  
35 regarding a child who is in protective custody, or from a  
36 child's guardian ad litem, shall be provided to the child's  
37 counsel within 30 days of the request. Counsel shall be  
38 given access to records maintained by hospitals or by  
39 other medical or nonmedical practitioners or by child



1 care custodians, in the manner prescribed by Section 1158  
2 of the Evidence Code.

3 (g) In a county of the third class, if counsel is to be  
4 provided to a minor at county expense other than by  
5 counsel for the agency, the court shall first utilize the  
6 services of the public defender prior to appointing  
7 private counsel, to provide legal counsel. Nothing in this  
8 subdivision shall be construed to require the  
9 appointment of the public defender in any case in which  
10 the public defender has a conflict of interest. In the  
11 interest of justice, a court may depart from that portion  
12 of the procedure requiring appointment of the public  
13 defender after making a finding of good cause and stating  
14 the reasons therefor on the record.

15 (h) In a county of the third class, if counsel is to be  
16 appointed for a parent or guardian at county expense, the  
17 court shall first utilize the services of the alternate public  
18 defender, prior to appointing private counsel, to provide  
19 legal counsel. Nothing in this subdivision shall be  
20 construed to require the appointment of the alternate  
21 public defender in any case in which the public defender  
22 has a conflict of interest. In the interest of justice, a court  
23 may depart from that portion of the procedure requiring  
24 appointment of the alternate public defender after  
25 making a finding of good cause and stating the reasons  
26 therefor on the record.

27 SEC. 8. Section 358.1 of the Welfare and Institutions  
28 Code is amended to read:

29 358.1. Each social study or evaluation made by a social  
30 worker or child advocate appointed by the court,  
31 required to be received in evidence pursuant to Section  
32 358, shall include, but not be limited to, a factual  
33 discussion of each of the following subjects:

34 (a) Whether the county welfare department or social  
35 worker has considered child protective services, as  
36 defined in Chapter 5 (commencing with Section 16500)  
37 of Part 4 of Division 9, as a possible solution to the  
38 problems at hand, and has offered these services to  
39 qualified parents if appropriate under the circumstances.



(b) What plan, if any, for return of the child to his or her parents and for achieving legal permanence for the child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the child will be served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.

(d) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(e) Whether the parent has been advised of his or her option to participate in adoption planning and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.

(f) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration shall not be cause for continuance of the dispositional hearing.

(g) Whether the child has been or will be referred to educational services and what services the child is receiving, including special—~~educational~~ *education and related* services if the child has exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or accommodations if the child has disabilities as described in Chapter 16 of Title 29 of the United States Code Annotated; ~~and any information concerning whether.~~ *The social worker or child advocate shall solicit comments from the appropriate local education agency prior to completion of the social study.*

(h) Whether the right of the parent or guardian to make educational decisions for the child should be limited by the court pursuant to Section 7579.5 of the Government Code.

SEC. 9. Section 360 of the Welfare and Institutions Code is amended to read:

360. After receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment as follows:



1 (a) Notwithstanding any other provision of law, if the  
2 court finds that the child is a person described by Section  
3 300 and the parent has advised the court that the parent  
4 is not interested in family maintenance or family  
5 reunification services, it may, in addition to or in lieu of  
6 adjudicating the child a dependent child of the court,  
7 order a legal guardianship, appoint a legal guardian, and  
8 issue letters of guardianship, if the court determines that  
9 a guardianship is in the best interest of the child, provided  
10 the parent and the child agree to the guardianship, unless  
11 the child's age or physical, emotional, or mental condition  
12 prevents the child's meaningful response. The court shall  
13 advise the parent and the child that no reunification  
14 services will be provided as a result of the establishment  
15 of a guardianship. The proceeding for the appointment of  
16 a guardian shall be in the juvenile court.

17 Any application for termination of guardianship shall  
18 be filed in juvenile court in a form as may be developed  
19 by the Judicial Council pursuant to Section 68511 of the  
20 Government Code. Section 388 shall apply to this order  
21 of guardianship.

22 No person shall be appointed a legal guardian under  
23 this section until an assessment as specified in subdivision  
24 (g) of Section 361.5 is read and considered by the court  
25 and reflected in the minutes of the court. The assessment  
26 shall include the following:

27 (1) Current search efforts for, and notification of, a  
28 noncustodial parent in the manner provided in Section  
29 337.

30 (2) A review of the amount of and nature of any  
31 contact between the child and his or her parents since the  
32 filing of the petition.

33 (3) An evaluation of the child's medical,  
34 developmental, scholastic, mental, and emotional status.  
35 The evaluation of the minor's scholastic status shall  
36 include whether the child has—~~previously~~ been identified  
37 as having exceptional needs as described in Part 30  
38 (commencing with Section 56000) of Division 4 of Title  
39 2 of the Education Code or disabilities justifying  
40 accommodations as described in Chapter 16 of Title 29 of



1 the United States *Code* Annotated; and any information  
2 concerning whether the right of the parent or guardian  
3 to make educational decisions for the child has previously  
4 been limited by the court under Section 7579.5 of the  
5 Government Code; and whether the parent or guardian  
6 has previously designated an educational representative.

7 (4) A preliminary assessment of the eligibility and  
8 commitment of any identified prospective guardian,  
9 particularly the caretaker, to include a social history  
10 including a screening for criminal records and prior  
11 referrals for child abuse or neglect, the capability to meet  
12 the child's needs, and the understanding of the legal and  
13 financial rights and responsibilities of guardianship.

14 (5) The relationship of the child to any identified  
15 prospective guardian, the duration and nature of the  
16 relationship, the motivation for seeking guardianship,  
17 and a statement from the child concerning the  
18 guardianship, unless the child's age or physical,  
19 emotional, or other condition precludes the child's  
20 meaningful response, and if so, a description of the  
21 condition.

22 (6) An analysis of the likelihood that the child would  
23 be adopted if parental rights were terminated.

24 The person responsible for preparing the assessment  
25 may be called and examined by any party to the  
26 guardianship proceeding.

27 (b) If the court finds that the child is a person  
28 described by Section 300, it may, without adjudicating the  
29 child a dependent child of the court, order that services  
30 be provided to keep the family together and place the  
31 child and the child's parent or guardian under the  
32 supervision of the social worker for a time period  
33 consistent with Section 301.

34 (c) If the family subsequently is unable or unwilling to  
35 cooperate with the services being provided, the social  
36 worker may file a petition with the juvenile court  
37 pursuant to Section 332 alleging that a previous petition  
38 has been sustained and that disposition pursuant to  
39 subdivision (b) has been ineffective in ameliorating the  
40 situation requiring the child welfare services. Upon

1 hearing the petition, the court shall order either that the  
2 petition shall be dismissed or that a new disposition  
3 hearing shall be held pursuant to subdivision (d).

4 (d) If the court finds that the child is a person  
5 described by Section 300, it may order and adjudge the  
6 child to be a dependent child of the court.

7 SEC. 10. Section 361 of the Welfare and Institutions  
8 Code is amended to read:

9 361. (a) In all cases in which a minor is adjudged a  
10 dependent child of the court on the ground that the  
11 minor is a person described by Section 300, the court may  
12 limit the control to be exercised over the dependent child  
13 by any parent or guardian and shall by its order clearly  
14 and specifically set forth all those limitations. The court  
15 shall consider the educational needs of the child, and if  
16 appropriate, proceed under Section 56156 of the  
17 Education Code and Section 7579.5 of the Government  
18 Code. Any limitation on the right of the parent or  
19 guardian to make educational decisions for the child shall  
20 be specifically addressed in the court order. The  
21 limitations shall not exceed those necessary to protect the  
22 child.

23 *Notwithstanding any other provision of law, no person*  
24 *shall be appointed to make educational decisions*  
25 *concerning a child if that person is employed by a*  
26 *nonpublic, nonsectarian school or agency in which the*  
27 *child may be placed or if that person has any other, similar*  
28 *conflict of interest in determining the placement of the*  
29 *child.*

30 (b) Nothing in subdivision (a) shall be construed to  
31 limit the ability of a parent to voluntarily relinquish his or  
32 her child to the State Department of Social Services or to  
33 a licensed county adoption agency at any time while the  
34 child is a dependent child of the juvenile court if the  
35 department or agency is willing to accept the  
36 relinquishment.

37 (c) No dependent child shall be taken from the  
38 physical custody of his or her parents or guardian or  
39 guardians with whom the child resides at the time the

1 petition was initiated unless the juvenile court finds clear  
2 and convincing evidence of any of the following:

3 (1) There is a substantial danger to the physical health,  
4 safety, protection, or physical or emotional well-being of  
5 the minor or would be if the minor were returned home,  
6 and there are no reasonable means by which the minor's  
7 physical health can be protected without removing the  
8 minor from the minor's parents' or guardians' physical  
9 custody. The fact that a minor has been adjudicated a  
10 dependent child of the court pursuant to subdivision (e)  
11 of Section 300 shall constitute prima facie evidence that  
12 the minor cannot be safely left in the custody of the  
13 parent or guardian with whom the minor resided at the  
14 time of injury. The court shall consider, as a reasonable  
15 means to protect the minor, the option of removing an  
16 offending parent or guardian from the home. The court  
17 shall also consider, as a reasonable means to protect the  
18 minor, allowing a nonoffending parent or guardian to  
19 retain custody as long as that parent or guardian presents  
20 a plan acceptable to the court demonstrating that he or  
21 she will be able to protect the child from future harm.

22 (2) The parent or guardian of the minor is unwilling to  
23 have physical custody of the minor, and the parent or  
24 guardian has been notified that if the minor remains out  
25 of their physical custody for the period specified in  
26 Section 366.25 or 366.26, the minor may be declared  
27 permanently free from their custody and control.

28 (3) The minor is suffering severe emotional damage,  
29 as indicated by extreme anxiety, depression, withdrawal,  
30 or untoward aggressive behavior toward self or others,  
31 and there are no reasonable means by which the minor's  
32 emotional health may be protected without removing the  
33 minor from the physical custody of his or her parent or  
34 guardian.

35 (4) The minor or a sibling of the minor has been  
36 sexually abused, or is deemed to be at substantial risk of  
37 being sexually abused, by a parent, guardian, or member  
38 of his or her household, or other person known to his or  
39 her parent, and there are no reasonable means by which  
40 the minor can be protected from further sexual abuse or

1 a substantial risk of sexual abuse without removing the  
2 minor from his or her parent or guardian, or the minor  
3 does not wish to return to his or her parent or guardian.

4 (5) The minor has been left without any provision for  
5 his or her support, or a parent who has been incarcerated  
6 or institutionalized cannot arrange for the care of the  
7 minor, or a relative or other adult custodian with whom  
8 the child has been left by the parent is unwilling or unable  
9 to provide care or support for the child and the  
10 whereabouts of the parent is unknown and reasonable  
11 efforts to locate him or her have been unsuccessful.

12 (d) The court shall make a determination as to  
13 whether reasonable efforts were made to prevent or to  
14 eliminate the need for removal of the minor from his or  
15 her home or, if the minor is removed for one of the  
16 reasons stated in paragraph (5) of subdivision (c),  
17 whether it was reasonable under the circumstances not  
18 to make any of those efforts. The court shall state the facts  
19 on which the decision to remove the minor is based.

20 (e) The court shall make all of the findings required by  
21 subdivision (a) of Section 366 in either of the following  
22 circumstances:

23 (1) The minor has been taken from the custody of his  
24 or her parent or guardian and has been living in an  
25 out-of-home placement pursuant to Section 319.

26 (2) The minor has been living in a voluntary  
27 out-of-home placement pursuant to Section 16507.4.

28 ~~SEC. 11. Section 601 of the Welfare and Institutions~~  
29 ~~Code is amended to read:~~

30 ~~601. (a) Any person under the age of 18 years who~~  
31 ~~persistently or habitually refuses to obey the reasonable~~  
32 ~~and proper orders or directions of his or her parents,~~  
33 ~~guardian, or custodian, or who is beyond the control of~~  
34 ~~that person, or who is under the age of 18 years when he~~  
35 ~~or she violated any ordinance of any city or county of this~~  
36 ~~state establishing a curfew based solely on age is within~~  
37 ~~the jurisdiction of the juvenile court which may adjudge~~  
38 ~~the minor to be a ward of the court.~~

39 ~~(b) If a minor has four or more trancies within one~~  
40 ~~school year as defined in Section 48260 of the Education~~

~~Code or a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court. However, it is the intent of the Legislature that no minor who is adjudged a ward of the court pursuant solely to this subdivision shall be removed from the custody of the parent or guardian except during school hours.~~

~~(c) To the extent practically feasible, a minor who is adjudged a ward of the court pursuant to this section shall not be permitted to come into or remain in contact with any minor ordered to participate in a truancy program, or the equivalent thereof, pursuant to Section 602.~~

~~(d) Any peace officer or school administrator may issue a notice to appear to a minor who is within the jurisdiction of the juvenile court pursuant to this section.~~

~~(e) Because of the high correlation between truancy and unmet special education needs, a presumption exists that a truant should be referred for assessment in writing by the parent to the school district to determine whether the child has exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or has disabilities requiring accommodations as described in Chapter 16 of Title 29 of the United States Annotated.~~

~~SEC. 12.~~

~~SEC. 11. Section 706.5 of the Welfare and Institutions Code is amended to read:~~

~~706.5. In any case where foster care placement is being considered, or has been made, each social study made by a probation officer, required to be received in evidence pursuant to Section 706, shall include, but not be limited to, the factual material listed in subdivisions (a) and (b) of Section 358.1.~~

~~Each social study made by a probation officer, required to be received in evidence pursuant to Section 706, shall include, but not be limited to, factual material concerning whether the school district has met its legal obligations to provide educational services to the child, including special educational services if the child has exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or accommodations if the child has disabilities as described in Chapter 16 of Title 29 of the United States Annotated, and any information concerning whether the right of the parent or guardian to make educational decisions for the child should be limited by the court pursuant to Section 7579.5 of the Government Code., (b), (g), and (h) of Section 358.1. The probation officer shall solicit comment from the appropriate local education agency prior to completion of the study.~~

~~SEC. 13.~~

SEC. 12. Section 1401 of the Welfare and Institutions Code is amended to read:

1401. The Legislature finds and declares that:

(a) There is a continuing need to institute early intervention and prevention programs for children and their families at risk of coming under the jurisdiction of the juvenile court as a consequence of either delinquent conduct of the child or parental abuse and neglect, including neglect by the parent of the education rights of the child, including special~~educational~~ *education and related* rights if the child has exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or rights to accommodations if the child has disabilities as described in Chapter 16 of Title 29 of the United States *Code* Annotated.

(b) Children and their families at risk of coming under the jurisdiction of the juvenile court shall, in conformity with the interests of public safety and protection, receive community-based care, treatment, and guidance which is consistent with their best interests and which holds them accountable for their behavior.



1 (c) Currently, children come under the jurisdiction of  
2 the juvenile court because of one or more of the  
3 following:

4 (1) They have committed a criminal offense and are  
5 classified as wards of the court owing to their delinquent  
6 conduct.

7 (2) They are habitually disobedient or truant and are  
8 designated wards of the court because they are beyond  
9 parental control.

10 (3) They are in need of protective services and are  
11 classified as dependents of the court because they have  
12 been abused or neglected by a parent or guardian.

13 (d) Each juvenile court in California has the  
14 responsibility to address every case coming before it on  
15 an individual basis, recognizing the special education or  
16 *other* needs of each child, the child's family, and the  
17 community in which the conduct has occurred. Severely  
18 neglected and abused children, and children whose  
19 pattern of criminal conduct is well established or whose  
20 criminal acts are serious, make up the bulk of the cases  
21 handled by the juvenile courts. The procedural  
22 requirements are strict, the time limits are short, and the  
23 cases are usually complex, with substantial impact on the  
24 child and family, the probation and social services systems  
25 in the county, and the public at large.

26 (e) Attorneys represent children and family members  
27 in juvenile court, and because the stakes are high, many  
28 cases are contested. Hearings on these matters are usually  
29 emotional, often lengthy, and always expensive. Once the  
30 juvenile court assumes jurisdiction of the case, the  
31 assistance needed by the children and their families is  
32 comprehensive and costly, and resources are often  
33 inadequate.

34 (f) Considerably greater public resources have been  
35 spent on treating adverse outcomes than on preventing  
36 them.

37 (g) The current juvenile justice system is not meeting  
38 the needs of at-risk children and their families owing to  
39 a lack of community-based intervention and prevention  
40 ~~programs, or neglect by the schools of the educational~~





~~rights of the child~~ programs, or appropriate education services, including the right to receive special education and related services if the child has exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code and the right to receive accommodations if the child has disabilities as described in Chapter 16 of Title 29 of the United States Code Annotated.

(h) Because of limited resources, only the most serious cases come before the juvenile court, and by the time the court is asked to address the problems, it is often too late. The system of authoritative intervention by the courts and public agencies focuses on and labels children and families who could have remained out of that system if served earlier and more comprehensively.

(i) California juvenile courts are overwhelmed as a result of dramatically increased caseloads and the scarcity or inadequacy of resources to address the problems precipitating court involvement.

(j) Children and families who could benefit from early intervention and prevention programs are frequently overlooked until the conduct or condition becomes so aggravated that court action is required.

~~SEC. 14.~~

SEC. 13. Section 1402 of the Welfare and Institutions Code is amended to read:

1402. It is the intent of the Legislature to:

(a) Establish a model for Family Assessment Intervention and Resource (FAIR) centers for prevention and early intervention, with the juvenile court playing an important role in this judicially supervised, nonadversarial program that will result in a reduction and reallocation of costs to the court system. The purpose of the FAIR center is to do all of the following:

(1) Offer community-based prevention, intervention, and treatment services in a neighborhood setting.

(2) Serve as a resource for children whose conduct or condition comes within statutory descriptions, but whose cases are amenable to resolution short of court

1 intervention or are not yet serious enough to warrant the  
2 immediate filing of a juvenile court petition.

3 (3) Reduce the need for intensive judicial  
4 intervention in the future with concomitant savings in  
5 appointed attorney fees and court support costs.

6 (4) Shift the focus of intervention toward individual  
7 and family responsibility and accountability while  
8 eliminating the practice of labeling children according  
9 only to statutory definitions.

10 (5) Enhance the effectiveness of the judicial system  
11 and the role of the juvenile court.

12 ~~(6) Increase compliance by the schools with education~~  
13 ~~laws, including those providing for special educational~~

14 (6) *Ensure that the educational needs of the minor are*  
15 *being met, including special education and related*  
16 *services if the child has exceptional needs as described in*  
17 *Part 30 (commencing with Section 56000) of Division 4 of*  
18 *Title 2 of the Education Code or for accommodations if*  
19 *the child has disabilities as described in Chapter 16 of*  
20 *Title 29 of the United States Code Annotated.*

21 (b) Establish pilot and demonstration projects in up to  
22 three counties to fulfill the FAIR center model goal and  
23 to evaluate whether the FAIR center model better meets  
24 the needs of at-risk children and their families in a  
25 cost-effective manner by providing a community-based  
26 intervention and prevention program. The pilot and  
27 demonstration projects shall include all of the following:

28 (1) A process by which, in lieu of filing a petition to  
29 declare a child a ward or a dependent, at-risk children  
30 and their families are referred to a FAIR center. The  
31 process shall include the filing of a petition under Section  
32 1420, as provided in Section 1410.

33 (2) A community-based FAIR center that will provide  
34 referrals or services adapted to the individual families and  
35 the communities or neighborhoods to be served.

36 (3) A contractual agreement between families  
37 referred to FAIR centers and FAIR center  
38 representatives encouraging compliance with a case plan  
39 for recommended services. The contractual agreement  
40 shall be filed with the local juvenile court.



(4) Establish procedures to ensure individual accountability on the part of each family member to fulfill contractual agreements made with the FAIR center.

~~SEC. 15.~~

*SEC. 14.* Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

